UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA	:	
- v. -	:	**10 Cr. 541 (MGC)**
FAISAL SHAHZAD,	:	
Defendant.	:	

- X

GOVERNMENT'S MEMORANDUM IN CONNECTION
WITH THE SENTENCING OF FAISAL SHAHZAD

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The Government respectfully submits this memorandum in connection with the sentencing of Faisal Shahzad ("Shahzad") scheduled for October 5, 2010. In 2009, Shahzad, a naturalized United States citizen, traveled from the United States to Pakistan where he sought instruction in bomb-making in order to wage an attack inside the United States. While in Pakistan, he received instruction on the building and the detonation of different types of bombs from trainers affiliated with Tehrik-e-Taliban (the "TTP"), a militant extremist group based in Pakistan that was recently designated a foreign terrorist organization by the U.S. Department of State. During his time in Pakistan, Shahzad appeared in a video recorded by the TTP in which he discussed his plan to attack the United States and encouraged other Muslims to follow his example. Thereafter, Shahzad returned to the United States and, over the course of three months in early 2010, he purchased all of the components necessary for his bomb, including fertilizer, propane and gasoline, and he received approximately $12,000 in cash from the TTP to help fund the attack. In the weeks leading up to the attempted bombing, Shahzad used the internet as part of his effort to maximize the deadly effect of his bomb by accessing websites that provided real-time video of the crowds in Times Square. Finally, during the late afternoon of May 1, 2010, Shahzad drove his car, which was packed with the bomb he had built, from his residence in Connecticut to Times Square and parked the car on 45th Street near Seventh Avenue. He then attempted to initiate the bomb detonation process inside the car by lighting a fuse, and after doing so, he got out of the car, armed with the semi-automatic rifle that he had brought with him, and walked to Grand Central terminal. While walking to Grand Central terminal, he listened for the sound of the bomb exploding. Two days later, he was arrested at John F. Kennedy International Airport while trying to the leave the United States on a commercial flight. Following his arrest, Shahzad waived his *Miranda* rights and stated, among other things, that he believed his bomb would have killed at least 40 people, and that, if he had not been arrested, he planned to detonate a second bomb in New York City two weeks later.

As a result of the foregoing conduct, Shahzad was charged in a ten-count indictment with the following crimes: (1) attempted use of a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332; (2) conspiracy to use a weapon of mass destruction, in violation of Title 18, United States Code, Section 2332; (3) possession and use of a firearm during and in relation to a conspiracy to use a weapon of mass destruction, in violation of Title 18, United States Code, Section 924(c); (4) attempted act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 2332b; (5) conspiracy to commit an act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 2332b; (6) attempted use of a destructive device during and in relation to a conspiracy to commit an act of terrorism transcending national boundaries, in violation of Title 18, United States Code, Section 924(c); (7) transportation of an explosive, in violation of Title 18, United States Code, Section 844(d); (8) conspiracy to transport an explosive, in violation of

Title 18, United States Code, Section 844(n); (9) attempted destruction of property by fire and explosive, in violation of Title 18, United States Code, Section 844(i); and (10) conspiracy to destroy property by fire and explosive, in violation of Title 18, United States Code, Section 844(n).

At his first appearance before the Court, Shahzad pled guilty to all ten charges against him. Based on that plea, Shahzad faces a mandatory term of life imprisonment. More specifically, based on his guilty pleas to Counts One, Two, Seven, Eight, Nine and Ten, Shahzad faces a mandatory minimum sentence of five years' imprisonment and a maximum sentence of life imprisonment. In addition, based on his guilty plea to Count Three, he faces a mandatory term of five years' imprisonment, which must run consecutively to any other term of imprisonment.[1] In addition, based on his guilty plea to Counts Four and Five, he faces a

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[1] In *United States* v. *Whitley*, the Second Circuit held that subsection 924(c)(1)(A)'s "except clause" prohibited the district court from imposing a ten-year minimum consecutive sentence for the use and discharge of a firearm because the defendant was also convicted of another provision of law that provided a greater minimum sentence, namely, felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), which carried a 15 year mandatory minimum sentence. 529 F.3d 150, 151 (2d Cir. 2008); *see also United States* v. *Williams*, 558 F.3d 166 (2d Cir. 2009) (extending holding in *Whitley* to narcotics cases, thereby exempting a defendant from a mandatory consecutive sentence for use or possession of a firearm where that defendant is also subject to a higher mandatory minimum sentence in connection with a conviction for the predicate narcotics crime during which the firearm was used). The issue raised in *Whitley* and *Williams* is currently under review by the Supreme Court. *See Abbott* v. *United States*, 574 F.3d 203 (3d Cir. 2009), *cert*. *granted*, 130 S. Ct. 1284 (2010) (No. 09-479), and *Gould* v. *United States*, 329 Fed. Appx. 569 (5th Cir. 2009), *cert*. *granted*, 130 S. Ct. 1283 (2010) (No. 09-7073).

Two courts in this District have interpreted *Whitley* to require that a defendant convicted of multiple counts of section 924(c) in the same case be exempted from the lowest mandatory consecutive sentence attributable to the 924(c) convictions. *See United States* v. *Celaj*, 07 Cr. 837 (RPP) (finding defendant exempt from five-year mandatory minimum sentence required by subsection 924(c)(1)(A) because he was subject to two twenty-five year mandatory

(continued...)

maximum term of life imprisonment on each count, and the sentence for each of these two counts must run consecutively to each other and to any other term of imprisonment. Finally, based on his guilty plea to Count Six, he faces a mandatory minimum term of life imprisonment, which must run consecutively to any other term of imprisonment. Accordingly, consistent with the governing statutes and the applicable Sentencing Guidelines, the Government respectfully submits that a sentence of life imprisonment is appropriate and statutorily required.[2]

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[1](...continued)
minimum sentences under subsection 924(c)(1)(C)); *United States* v. *Ballard*, 559 F. Supp. 2d 539, 541 (2009) (Rakoff, J.) ("the seven-year mandatory minimum sentence required by subsection 924(c)(1)(A) did not apply to defendant, because a greater minimum sentence of 25 years was required under subsection 924(c)(1)(C)"). The Government respectfully disagrees with this interpretation of *Whitley*. Consistent with the First Circuit's opinion in *United States* v. *Parker*, 549 F.3d 5, 10-12 (1st Cir. 2008), the Government submits that the Second Circuit's reasoning in *Whitley* does not apply to cases where, as here, each of the mandatory minimum sentences results from the defendant's possession or use of a different firearm or destructive device. Accordingly, Shahzad should be subject to a five-year mandatory consecutive sentence under Count Three. To be clear, even were this Court to adopt an interpretation of *Whitley* similar to that in *Celaj* and *Ballard,* Shahzad would still be subject to a mandatory minimum term of life imprisonment based on his guilty plea to Count Six.

[2] The Government respectfully submits that the sentence should be apportioned as follows: (i) five years' imprisonment for each of Count One and Count Two, both of which should run concurrently with each other and all other counts; (ii) to be followed by a term of five years' imprisonment for Count Three, which is mandatory and must run consecutively to all other counts; (iii) to be followed by a term of thirty years' imprisonment for Count Four, which must run consecutively to all other counts; (iv) to be followed by a term of thirty years' imprisonment for Count Five, which must run consecutively to all other counts; (v) to be followed by a term of life imprisonment for Count Six, which is mandatory and must run consecutively to all other counts; (vi) to be followed by a term of five years' imprisonment for each of Count Seven, Count Eight, Count Nine and Count Ten, all of which should run concurrently with each other and all other counts. Based upon the requirements of 18 U.S.C. § 924(c) and 18 U.S.C. § 2332b, the sentences for violations of these statutes must run consecutively to the sentences for all other counts. *See* 18 U.S.C. § 924(c)(1)(D)(ii); 18 U.S.C. § 2332b(c)(2).

I. FACTUAL BACKGROUND

A. Shahzad's Time With The TTP in Pakistan

In 2009, after having resided in the United States for approximately ten years and having become a naturalized United States citizen, Shahzad left the United States for Pakistan. He traveled to Pakistan so that he could learn how to build and to detonate a bomb in order to wage an attack inside the United States. While in Pakistan, a friend introduced him to the TTP, also known as the Pakistani Taliban, a Pakistan-based offshoot of the Taliban in Afghanistan that is committed to the violent overthrow of the Government of Pakistan. During a forty-day period from December 2009 through January 2010, Shahzad lived with members and associates of the TTP in the remote region of Pakistan known as Waziristan, which borders Afghanistan. During this period, he discussed with the TTP his plan to detonate a bomb within the United States, including potential targets. He also received five days of instruction on how to build and to detonate different types of bombs from an experienced bomb trainer affiliated with the TTP. While he was in Pakistan, the TTP also gave Shahzad approximately $5,000 in cash to help fund the attack.

During his stay with the TTP in Pakistan, Shahzad agreed to appear in a TTP-produced video about the planned attack. Approximately six months prior to the May 1st attempted bombing, Shahzad was featured in a video entitled, "A brave effort by Faisal Shahzad to attack United States in its own Land," which was produced by Umar Media, the media arm of the TTP. A copy of the video is attached as Exhibit A.

The video, which is approximately forty minutes long, begins with footage of Shahzad holding and then firing a machinegun in what appear to be the mountains of Pakistan. (*See* Exhibit A at 1 minute, 25 seconds). After approximately four and a half minutes, Shahzad begins to speak directly into the camera while holding the Koran. (*Id.* at 4 minutes, 35 seconds). Shahzad states that he has met certain TTP leaders, and that "we have decided that we are going to raise an attack inside America." (*Id.* at 5 minutes, 38 seconds). According to Shahzad, the purpose of the video is to "incite the Muslims to get up and fight against the enemy of Islam." (*Id.* at 6 minutes, 15 seconds). Throughout most of the video, one side of the screen shows Shahzad seated and quoting from the Koran, while the other side of the screen shows various publicly released photographs taken in Times Square following the attempted bombing, including a photograph of Shahzad's car parked on the street. (*Id.* at 8 minutes, 35 seconds). At one point in the video, Shahzad explains that "jihad is one of the pillars upon which Islam stands" (*id.* at 10 minutes, 20 seconds), and he later advises that "Jews and Christians have to accept Islam as a religion and if you don't do that, then you are bound to go in hellfire" (*id.* at 20 minutes, 40 seconds).

Toward the end of the video, Shahzad makes his intentions clear: "I have been trying to join my brothers in jihad ever since 9/11 happened. I am planning to wage an attack inside America." (*Id.* at 37 minutes, 35 seconds). And before the video concludes, Shahzad appeals to fellow Muslims to follow his example and do their part by attacking the United States:

> I also want to inform my brothers Muslim abroad living abroad [sic] that it is not difficult at all to wage an attack on the West, and specifically in the U.S., and completely defeat them

> inshallah.[3] Get up and learn from me and make an effort. Nothing is impossible if you just keep in mind that Allah is with you.

(*Id.* at 39 minutes, 25 seconds).

The video was released by the TTP via the internet on July 14, 2010.

B. Shahzad's Preparations For The Bombing

After returning to the United States in February 2010, Shahzad rented an apartment in Connecticut and soon began to purchase the necessary components for his bomb. Over the course of the following three months, Shahzad bought fertilizer, propane, and gasoline, among other things, from various stores in Connecticut; obtained significant quantities of fireworks from a store in Pennsylvania; and drove to Long Island and Massachusetts to receive approximately $12,000 in additional funds from the TTP from two money couriers. One week before the attempted bombing, on April 24, 2010, Shahzad bought a Nissan Pathfinder, the sport utility vehicle that he used to deliver the bomb to Times Square, from an unsuspecting seller who had posted an advertisement on the internet. After buying the Pathfinder, Shahzad installed black window tinting to make it more difficult to see into the vehicle.

In addition, throughout the three-month period leading up to the attempted bombing, Shahzad used the internet to access websites that provided real time video feeds of different areas of Times Square. These websites enabled Shahzad to determine which areas of Times Square drew the largest crowds and the times when those areas would be most crowded. According to Shahzad, he wanted to select the busiest time for pedestrian traffic in Times Square because pedestrians walking on the streets would be easier to kill and to injure than people driving in cars. Shahzad also maintained regular contact with members of the TTP over the internet. Using software programs that were installed on his laptop computer while he was in Pakistan, Shahzad and the TTP were able to exchange information about the bomb he was building, the vehicle he had purchased, and other topics.

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[3] "Inshallah" is an Arabic term meaning "God willing" or "if it is God's will."

Finally, in March 2010, Shahzad purchased a semi-automatic rifle that he planned to use in the event he was attacked or captured in connection with the bomb plot. To ensure he was fully prepared if confronted by law enforcement authorities, Shahzad also went to a firing range in Connecticut to practice firing a gun.

C. Shahzad's Attempted Detonation Of The Bomb

As May 1st approached, Shahzad, applying the training he had received from the TTP, single-handedly assembled the bomb at his residence in Connecticut. During the late afternoon of May 1st, he loaded the bomb into the rear area of the Pathfinder, and folded up his semi-automatic rifle into a laptop computer bag. He then drove for approximately an hour until he arrived in Times Square at about 6:00 p.m. He parked the Pathfinder near the southwest corner of 45th Street and Seventh Avenue. He then lit the bomb fuse, which led to the three different detonating components of the bomb (fertilizer, propane and gas). Shahzad had designed the bomb to detonate between two and a half minutes and five minutes after the lighting of the fuse.

After lighting the fuse, Shahzad got out of the Pathfinder and walked toward Grand Central terminal carrying the computer bag that contained his rifle. According to Shahzad, during the walk, he paused to wait for the sound of the bomb detonating before boarding a train back to Connecticut.

In connection with their investigation in this case, the Joint Terrorism Task Force (the

"JTTF") analyzed the bomb that Shahzad attempted to detonate. Based on that analysis as well as Shahzad's post-arrest statements, bomb technicians with the JTTF constructed the bomb that Shahzad intended to build, which was identical to Shahzad's bomb in all respects except that the JTTF bomb technicians ensured that their detonating components would detonate.

On June 29, 2010, the JTTF conducted a controlled detonation of its bomb after it was placed in the back of a vehicle identical to the one Shahzad used. The JTTF also placed other vehicles nearby in order to measure the explosive effects of the bomb. While it is impossible to calculate precisely the impact of Shahzad's bomb had it detonated, the controlled detonation conducted by the JTTF demonstrated that those effects would have been devastating to the surrounding area. A copy of the video recordings of the JTTF's controlled detonation is attached as Exhibit B.

D. Shahzad's Attempt To Flee

After returning home on the evening of May 1st, Shahzad advised one of his TTP associates via the internet of what he had done. He also began to follow the televised media coverage of the attempted bombing. Two days later, on May 3rd, believing that law enforcement authorities were closing in on him, Shahzad bought an airline ticket to Pakistan and drove to John F. Kennedy International Airport. He again brought his rifle with him but left it in his car when he went into the airport. On the evening of May 3rd, Shahzad was arrested at the airport and taken into JTTF custody.

After his arrest, Shahzad provided oral and written waivers of his *Miranda* rights and stated the following, in sum and substance and among other things: (i) he purchased all of the components of the bomb found in his car in Times Square; (ii) he loaded the car with the bomb;

(iii) he drove the loaded car to Times Square on May 1, 2010 and parked it at 45th Street and Seventh Avenue; (iv) he attempted to begin the detonation process of the car before abandoning it; (v) he believed that the bomb would kill about 40 people; and (vi) he was prepared to conduct additional attacks until he was captured or killed.

E. Shahzad's Plea

On June 21, 2010, Shahzad appeared before the Court for his arraignment on the Indictment. At that time, the defense advised the Court that Shahzad intended to plead guilty to all ten counts in the Indictment without the benefit of a plea agreement. In advance of the plea, the Government provided the Court and the defense with a *Pimentel* letter stating the Government's view that the applicable Guidelines sentence was life imprisonment. When asked by the Court at the beginning of the plea proceeding to explain why he was pleading guilty, Shahzad stated:

> I want to plead guilty and I'm going to plead guilty a hundred times forward because until the hour the U.S. pulls it [sic] forces from Iraq and Afghanistan and stops the drone strikes in Somalia and Yemen and in Pakistan . . . we will be attacking U.S., and I plead guilty to that.

(Plea Transcript 8).

After the Court advised Shahzad of the maximum penalties he faced, Shahzad admitted the following: (i) in the spring of 2009, he became a naturalized United States citizen after having lived in the United States for ten years; (ii) shortly thereafter, he left the United States for Pakistan because he wanted to join the Taliban in Afghanistan; (iii) from December 2009 through January 2010, he lived in Waziristan, Pakistan with members of the TTP, also known as the Pakistani Taliban; (iv) during that time, he made a "pact" with the TTP to wage an attack inside the United States and discussed his plans for the attack with the TTP; (v) in furtherance of the plan, the TTP provided him with five days of instruction on bomb-making and bomb-detonation as well as approximately $5,000 in cash; (vi) in early February 2010, he returned to the United States and rented an apartment in Bridgeport, Connecticut; (vii) from February through April 2010, he finalized his plan for the attack and purchased the necessary components for the bomb; (viii) during this period, he also received additional funds from the TTP; (ix) in the days leading up to May 1st, he built the bomb by himself inside his residence and then loaded it into his car; (x) on May 1st, he drove his car loaded with the bomb from Connecticut to Times Square and arrived at Times Square around 6:00 p.m.; and (xi) after arriving in Times Square, he ignited the fuse for the bomb, got out of the car and walked to Grand Central terminal where he boarded a train back to Connecticut. (*Id.* at 18-28).

Shahzad further explained that he ignited the bomb in the center of Times Square on a Saturday in the early evening deliberately, in order to maximize the number of people killed and injured. (*Id.* at 28). He described himself as a “mujahid” or Muslim soldier and “part of the answer to the U.S. terrorizing the Muslim nations and the Muslim people . . . .” (*Id.* at 29).

Finally, Shahzad also admitted that he bought a semi-automatic 9 mm Kel-Tec rifle prior to the attempted bombing for his use in case he was “attacked” or “captured.” (*Id.* at 31). He brought the rifle with him to Times Square folded up in a computer bag and then carried it with him to Grand Central terminal after attempting to detonate the bomb. (*Id.* at 31-32). He then kept the rifle with him at home until he saw on the news that law enforcement authorities were “getting close” to him. (*Id.* at 32). At that time, he decided to try to flee the country and return to Pakistan. Two days after the attempted bombing, he drove to John F. Kennedy International Airport with the rifle, where he was arrested. (*Id.*).

II. APPLICABLE LEGAL PRINCIPLES

Under current law, sentencing courts must engage in a three-step sentencing procedure. *See United States* v. *Crosby*, 397 F.3d 103 (2d Cir. 2005). First, the district court must determine the applicable sentencing range, and, in so doing, "the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence." *Id.* at 112. Second, the district court must consider whether a departure from that Guidelines range is appropriate. *Id.* Third, the court must consider the Guidelines range, "along with all of the factors listed in section 3553(a)," and determine the sentence to impose. *Id.* at 113.

Although the Guidelines are no longer mandatory, district courts must continue to "consult" the Guidelines and "take them into account" when sentencing. *United States* v. *Booker*, 543 U.S. 220, 264 (2005); *accord United States* v. *Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) ("In [*Booker*], the Court retained an important role for the Sentencing Commission, leaving untouched the statutory direction to district courts that they should consult the Guidelines range when imposing sentence.") (citing *Booker*, 543 U.S. at 245-46). Because the Guidelines are "the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions," *Gall* v. *United States*, 552 U.S. 46 (2007), district courts must treat the Guidelines as the "starting point and the initial benchmark" in sentencing proceedings, *id.* at 49, and must "remain cognizant of them throughout the sentencing process," *id.* at 50 n.6. It also is the Court's duty to form its own view of the "nature and circumstances of the offense and the history and characteristics of the defendant," and to then impose a sentence "sufficient, but not greater than necessary," to accomplish the objectives of criminal sentencing. 18 U.S.C. § 3553(a); *see United States* v. *Cavera*, 500 F.3d at 188 ("In addition to taking into account the Guidelines range, the district court must form its own view of 'the nature and circumstances of the offense and the history and characteristics of the defendant.'") (*en banc*).

III. DISCUSSION

A. The Applicable Guidelines Range

The Government agrees with the Probation Office's analysis with respect to the applicable Guidelines range for Shahzad. Specifically, the Government agrees that, pursuant to United States Sentencing Guidelines ("U.S.S.G.") §§ 3D1.1(a) and 3D1.2(b), all ten counts except for Counts Three and Six are grouped together into a single group. (Presentence Report ("PSR") ¶ 56). Pursuant to U.S.S.G. § 2K2.4(b), for Count Three, a mandatory and consecutive five-year term of imprisonment is to follow any other term of imprisonment, and for Count Six, a mandatory and consecutive term of life imprisonment is to follow any other term of imprisonment. (PSR ¶¶ 57-58). The Government also agrees that the combined offense level for the group containing Counts One, Two, Four, Five, Seven, Eight, Nine and Ten is 45, pursuant to U.S.S.G. § 3D1.3(a). (PSR ¶¶ 62-68). Because Shahzad accepted responsibility by pleading guilty prior to trial and provided timely notification of his intention to plead guilty, the offense level is decreased by 3 levels under U.S.S.G. §§ 3E1.1(a) and 3E1.1(b). (PSR ¶ 69).

Based on the foregoing, the Government agrees that Shahzad's applicable Guidelines offense level is 42. (PSR ¶ 72). Because the terrorism enhancement in U.S.S.G. § 3A1.4 applies, pursuant to U.S.S.G. § 3A1.4(b), Shahzad's Criminal History Category is Category VI. (PSR ¶ 75). Accordingly, based on a Guidelines' offense level of 42, and a Criminal History Category of VI, the resulting Guidelines range is 360 months' to life imprisonment. However, pursuant to U.S.S.G. § 5G1.1, because the statutorily required minimum term of imprisonment under Count Six is life imprisonment, the applicable Guidelines range becomes life imprisonment. (PSR ¶ 102).

B. The 18 U.S.C. § 3553(a) Factors And The Appropriate Sentence

While Shahzad is subject to a mandatory sentence of life imprisonment based upon his pleas to Counts Three and Six, the Government respectfully submits that, even if a life sentence were not statutorily required, it is the only appropriate sentence in this case. An analysis of the Section 3553(a) factors, and particularly the history and characteristics of the defendant and the nature of the offense, makes plain the extraordinary nature of Shahzad's crimes, and counsels for nothing less than a sentence of life imprisonment.

Far from providing an explanation for his criminal activity, Shahzad's history and characteristics strongly militate in favor of the maximum available sentence. Prior to his decision to attempt to kill and maim scores of unsuspecting men, women and children in the heart of New York City, Shahzad had achieved a degree of academic and professional success in the United States and was living a life with his wife and two young children that was full of promise. Before seeking bomb-making training from a terrorist group in rural Pakistan in 2009, Shahzad had lived in the United States for nearly ten years and had taken advantage of an array of opportunities that this country provided. In his early years here, he was permitted to study at a university in Connecticut on a student visa and obtain a college degree. After graduating from college, a U.S. company hired him and agreed to sponsor him, thereby allowing him to remain in the United States on a working visa. And thereafter, a second U.S. company hired him and continued to sponsor him until he became a naturalized U.S. citizen in April 2009. He was paid competitive salaries at both jobs, which permitted him and his family to live comfortably in the suburbs of Connecticut.

Notwithstanding this series of opportunities and accomplishments, and the recent births of his two children, Shahzad knowingly and deliberately chose a different path – a nihilistic path that celebrated conflict and death cloaked in the rhetoric of a distorted interpretation of Islam. He put himself before his family and sought to be embraced by a group of militant extremists in order to exact revenge on the same country where he had lived for nearly a decade and in which he had applied to become a citizen. And at every step of his journey toward jihad, Shahzad knew exactly what he was doing. As he explained in the TTP video months before the attempted bombing, since September 11, 2001, he had yearned to play a role in the jihad against the United States. (Exhibit A at 37 minutes, 35 seconds).

Moreover, after his bomb failed to detonate and he was arrested, Shahzad never expressed any remorse for his conduct. In fact, during his post-*Miranda* interviews with law enforcement in the days after his arrest, he spoke with pride about what he and his co-conspirators had done. He continued to express a sense of pride and accomplishment at his arraignment when he advised the Court that he wanted to plead guilty immediately to all ten charges. After he explained to the Court that he was prepared to plead guilty "a hundred times forward" for his conduct, Shahzad described himself as a "mujahid" (Muslim soldier) who had deliberately placed the bomb in the middle of Times Square on a Saturday evening in the spring to maximize the number of casualties. Of course, this behavior is entirely consistent with his words from months earlier captured on the TTP video in which he brags that it is not difficult to attack the United States, and exhorts other Muslims to learn from him and to follow his lead. Shahzad's continuing efforts to glorify himself and his actions serve as a clear window into his mindset – a mindset where there is no place for remorse and no potential for rehabilitation. In short, unlike many defendants, Shahzad's history and characteristics do not serve to mitigate his sentence; indeed, nothing about Shahzad's history and characteristics calls for a sentence of less than life imprisonment.

With respect to an analysis of the nature of the offense, the premeditated attempt to kill and maim scores of unsuspecting innocent men, women and children with a homemade bomb can only be described as utterly reprehensible. More than that, Shahzad used the internet to measure the size of crowds in one of the most popular locations in the world in order to maximize the number of innocent victims. Of course, this does not also account for the extensive property damage that would have resulted from Shahzad's bomb, as well as the long term emotional, psychological and economic toll such an attack would have wrought. Shahzad did not select his target at random but had every intention of delivering a powerful and terrorizing strike to the heart of New York City. That he did not succeed should in no way inure to his benefit. Had the bombing played out as Shahzad had so carefully planned, the lives of numerous residents and visitors of the city would have been lost and countless others would have been forever traumatized. This is to say nothing of the significant economic and emotional impact a successful attack would have had on the entire nation.

Beyond the premeditation, the preparation and the sophistication of the offense, Shahzad's crimes are uniquely disturbing because they were committed by a United States citizen who received training from a foreign terrorist organization. Foreign terrorist organizations depend upon a wide array of individuals across the world to survive and to accomplish their terrorist objectives. History has demonstrated that some within the networks of terrorist organizations are United States citizens who exploit the benefits of their citizenship to identify vulnerabilities within the United States or align themselves against the United States for the operational advantage of terrorist organizations. These individuals constitute a particularly pernicious threat to the national security of the United States. Under the cover of their U.S. citizenship, these operatives, facilitators, and sympathizers can remain in the United States undetected as well as travel freely around the world on their U.S. passports, gathering information and developing expertise for the benefit of those committed to harming the United States directly and its interests abroad. Indeed, some terrorist organizations, including al Qaeda, have publicly acknowledged the unique value that United States citizens provide to their terrorist missions. Accordingly, while it is self-evident that specific deterrence is important in this case, deterring other United States citizens as well as those who are permitted to reside here from working to undermine our national security by aiding foreign terrorist organizations is vital.

There are few threats to the national security and the way of life in this country greater than a citizen who chooses to serve as an operative for a foreign terrorist organization and attempts to wage an attack inside the United States. Shahzad exploited the freedom and the opportunities provided to him in the United States to further his and the TTP's violent ends. He privately declared his own war on the United States, armed himself with a semi-automatic rifle, and was prepared to open fire on law enforcement agents and officers if they attempted to arrest him. As part of his war, he selected unsuspecting civilians as his targets, irrespective of their race, religion or nationality. After he lit the fuse, he so hoped that his bomb would detonate that he paused to listen for the explosion as he walked to Grand Central terminal, and if he had not been caught, he planned to detonate another bomb in New York City two weeks later. And for all of this, far from expressing remorse or contrition, Shahzad has only evinced a lasting sense of pride in his actions. Accordingly, irrespective of any mandatory sentence required by statute, only one sentence – a sentence of life imprisonment – is sufficient for this defendant.

IV. CONCLUSION

Based on the foregoing, the Government respectfully submits that a sentence of life imprisonment is appropriate in this case.

Dated: September 29, 2010

Respectfully submitted,

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By: /s

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the following by ECF and electronic mail on September 29, 2010:

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/s
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